

EXHIBIT “A”

1

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

In Re: LUPRON MARKETING AND MDL No. 1430
SALES PRACTICES LITIGATION,

Civil Action No. 01-10861-RGS

TRANSCRIPT OF FAIRNESS HEARING

DAY 3

APRIL 15, 2005, 10:15 a.m.

BEFORE HONORABLE RICHARD G. STEARNS

UNITED STATES DISTRICT COURT

JOHN J. MOAKLEY U.S. COURTHOUSE

ONE COURTHOUSE WAY

BOSTON, MA 02210

DEBRA M. JOYCE, RMR, CRR

Official Court Reporter

John J. Moakley U.S. Courthouse

1 Courthouse Way, Room 5204

Boston, MA 02210

617-737-4410

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3

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FAIRNESS HEARING, DAY 3, TOM SOBAL

19

5 Next rule, 23(e)(2), the need for class counsel to
6 disclose the existence of any agreements. That we have done.
7 We have filed the settlement agreement, and we have filed the
8 modifications to that settlement agreement.

9 There has been a suggestion that there are some
10 kind of hidden agreements, some kind of clandestine deals that
11 class counsel have engaged in. There are none. I'll give you
12 a couple of the suggestions and then the rebuttals to it.

13 First there's been a suggestion by intervenors'
14 counsel that the withdrawal of the objection by the Treskow
15 objector and their law firms, there might have been something
16 behind that. There is nothing at all. Once I had received the
17 objection from counsel for Treskow, that counsel I'm familiar
18 with, sometimes I'm adverse with them, sometimes my clients are
19 in line with them. I spoke to them on a variety of occasions,
20 communicating on the merits of the settlement, gave them
21 information they requested, information almost identical to the
22 kinds of information that were given to Kline & Specter. They
23 asked for follow-up information on the merits, which I gave to
24 them. And on the basis of an intelligent discussion of the
25 merits of the settlement, they decided to withdraw the

20

1 objection and had no quid pro quo whatsoever in connection with
2 that. They did not ask for attorneys' fees, and I did not
3 promise them attorneys' fees.

4 Similarly, there's been a suggestion that
5 Mr. Goldser and his clients, who have filed a submission in
6 this case, that there might be something untoward about that.
7 Mr. Goldser and his clients were potential objectors, as every,
8 in my view, class member is a potential objector. Until such
9 time as the settlement goes through I would treat any absent
10 class member as a potential objector requiring to be treated as
11 such and be treated with -- to deal with the issues and the
12 merits.

13 And Mr. Goldser has filed materials before this
14 Court in connection with the final approval, and his documents
15 show quite concretely there was an intelligent communication on
16 the merits of the settlement, an exchange of information.
17 Information that was no more robust than the information that
18 was shared with Kline & Specter for them to be able to make a
19 decision. And they made a decision, that they, too -- that
20 their clients' interests would be served now they understood

21 the purposes and the way the settlement worked for them to
22 participate in the settlement.

23 Consistent with the settlement agreement, which
24 obligates the class counsel to undertake good faith efforts to
25 make sure that anyone who is participating in the settlement

21

1 submits along with us a fee petition, Mr. Goldser and his
2 colleagues did, in fact, submit their fee petition. Exactly
3 consistent with the settlement agreement in paragraph 13.

4 Nothing untoward, nothing undisclosed by those
5 activities either. The intervenors know about that.

6 Mr. Goldser has filed a declaration, has filed his petition for
7 fee, all appropriate in accordance with that. The Goldser
8 memorandum I just referred to is the memorandum in support
9 that.

10 Now, there is a requirement in the rule -- again, I
11 don't know exactly what the paperwork flow has been on this,
12 but 24(e) requires that the Court approve of all of the Treskow
13 objections and how it anticipated that would happen in due
14 course.

1 THE COURT: Just one or two thoughts. There might
2 be some furtherance -- the issue that had been foremost in my
3 mind was the release issue; that is, whether, in fact, as
4 drafted it cut too broadly. I think I'm satisfied now that
5 counsel explained exactly what the release runs to, that the
6 release is properly drafted, although I think if I were to
7 approve the settlement, I would probably make my own
8 elaboration along the actual language of the agreement,
9 specifically that counsel all agree that the release would not
10 affect a citizen involving insurance coverage issues or alleged
11 co-conspirators, as was the case or the fear expressed with
12 counsel in the Swanston matter, or what, at least on its face,
13 would appear to be criminal activities in the case of Mr. Rowan
14 in the way he was billed by the clinic that was treating him.
15 But if counsel wished to file anything further
16 elaborating on the points that have been aired during the
17 course of the last three days, I'm sure I would consult it and
18 find it of use.

EXHIBIT “B”

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

**IN RE: LUPRON MARKETING AND
SALES PRACTICE LITIGATION**

)
) **MDL No: 1430**
) **Master File No.: 01-CV-10861**
)

**THIS DOCUMENT RELATES TO:
ALL CLASS ACTIONS**

) **Judge Richard G. Stearns**
)
)

**AFFIDAVIT OF RONALD S. GOLDSER
IN SUPPORT OF JOINT PETITION FOR ATTORNEYS' FEES
AND REIMBURSEMENT OF EXPENSES FILED ON BEHALF OF
ZIMMERMAN REED PLLP**

STATE OF MINNESOTA)

) ss:

COUNTY OF HENNEPIN)

I, Ronald S. Goldser, being duly sworn, depose and say:

1. I am a partner of the law firm of Zimmerman Reed, one of the Counsel for plaintiffs in this matter. I am submitting this Affidavit in support of all Plaintiffs' Counsel's (including my firm's) application for an award of attorneys' fees and reimbursement of expenses provided in connection with the services rendered to plaintiffs and the Class by my firm in the course of this litigation.

2. I am an attorney in good standing and duly licensed and admitted to the Bars of Minnesota and Wisconsin. The testimony set forth in this Declaration is based on first-hand knowledge, about which I could and would testify competently in open Court if called upon to do so.

3. This firm is counsel of record for class members and proposed plaintiff interveners Parker Hannifin, New York Sheet Metal Workers International Health and Welfare

Fund Local 28, Cape Health Plan, Community Care Plus and US Health and Life, as well as dozens of other plans which wish to remain nameless in these proceedings. As one of the counsel for the plaintiffs and Class, my firm and its associated counsel performed services on this matter as follows:

Review the settlement agreement from the perspective of non-SHP third party payers; prepare a proposed objection on behalf of this firm's clients concerning the claims of non-SHP third party payers; negotiate a resolution of the objections of this firm's clients with class counsel; undertake due diligence with respect to the fairness of the settlement as a whole; draft and file motion to intervene and memorandum in support of proposed settlement.

4. I have attached, as Exhibit 1, a biography of my firm, the attorneys in my firm, and my associated firms who were principally involved in this litigation.

5. I also attach, as Exhibit 2, a detailed summary indicating the amount of time spent by each attorney and paralegal of my firm and associated firms who worked on this litigation and the lodestar calculation based on my firm's historical billing rates (the rates for each timekeeper that were in effect during this litigation, and when the work was performed). Time expended in preparing this application for fees and reimbursement of expenses has not been included in this lodestar.

6. From the inception of the case through the present time, my firm and its associated counsel expended a total of 136.20 hours on behalf of the plaintiffs and the Class. The total lodestar amount for these hours based on my firm's historical hourly billing rates is \$49,601.25. The hourly rates set out in Exhibit 2 are the same rates that my firm charged, and on which we have received fee awards from other courts.

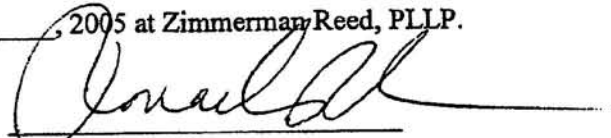
7. In addition, as detailed in Exhibit 3, my firm expended a total of \$338.64 in expenses in connection with the prosecution of this litigation. None of these expenses have been reimbursed to date.

8. My firm recorded these expenses as they were incurred, and they are reflected in its computerized bookkeeping records which were created from invoices, receipts and other proofs of the charges and payments.

9. Thus, for this litigation, the total historical lodestar of my firm is \$49,601.25 and we incurred expenses of \$338.64.

I declare under penalty of perjury under the laws of the Minnesota that the foregoing is true and correct.

Executed this _____ day of _____, 2005 at Zimmerman Reed, PLLP.


Ronald S. Goldser

SWORN TO AND SUBSCRIBED
before me this _____ day of _____,
2005

Notary Public

EXHIBIT 2**IN RE LUPRON MARKETING AND SALES PRACTICE LITIGATION****ZIMMERMAN REED PLLP (AND ASSOCIATED COUNSEL)
HOURS AND LODESTAR FROM INCEPTION THROUGH FEBRUARY 2005**

<u>NAME AND POSITION*</u>	<u>HISTORICAL HOURLY RATE(S)</u>	<u>NUMBER OF HOURS</u>	<u>HISTORICAL LODESTAR AMOUNT</u>
Ronald S. Goldser (P)	\$400.00	82.35	\$32,940.00
Timothy J. Becker(P)	\$350.00	5.90	\$ 2,065.00
David Rosen(A)	\$350.00	10.35	\$ 3,622.50
Jason Thompson (A)	\$350.00	20.25	\$ 7,087.50
Daniel C. Cohn (P)	\$530.00	.90	\$ 477.00
Kristin M. McDonough(A)	\$290.00	7.70	\$ 2,233.00
Tina M. Olson (PL)	\$140.00	2.00	\$ 280.00
Martha M. Kobberdahl (PL)	\$140.00	6.00	\$ 840.00
File Clerk (FC)	\$125.00	.75	\$ 56.25
 TOTALS		 136.20	 \$ 49,601.25

*(P) Partner, (A) Associate, (LC) Law Clerk, (PL) Paralegal

EXHIBIT “C”

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

IN RE: LUPRON® MARKETING
AND SALES PRACTICES LITIGATION

THIS DOCUMENT RELATES TO ALL
ACTIONS

) MDL No. 1430
)
) Master File No. 01-CV-10861
)
) Judge Richard G. Stearns
)

ACCOUNTING PURSUANT TO THE COURT'S ORDER OF MAY 15, 2006

Pursuant to the Court's Order for an Accounting dated May 15, 2006, the MDL Class Plaintiffs submit this accounting of (i) funds received under the settlement, (ii) funds distributed from the consumer fund, (iii) funds distributed from the TPP fund, and (iv) funds distributed for payment of counsel fees, reimbursable expenses and incentive payments. As the Court will see, three charts are attached showing all receipts to and payments from the Consumer Settlement Fund (Exhibit A) and the TPP Settlement Fund (Exhibit B), the distribution of attorneys' fees and expenses to each of class counsel and the law firm of Kline & Specter, P.C. (Exhibit C).

1. General Accounting

Each settlement fund was established pursuant to the Court-approved settlement of the various parties; the settlement's full terms were set forth in the two inter-connecting settlement agreements; the Consumer Class Settlement Agreement and the Settlement Agreement concerning the "Settling Health Plans" ("SHPs"), both dated November 15, 2004.

The combined Settlement called for Defendants to pay a total of \$150 million to the parties. This was allocated (i) \$40 million to the Consumer Settlement Pool; (ii) \$55 million to the SHPs (\$15 million of which remains in an escrow account awaiting final calculations and "true-up" of SHP claims as compared to those of the Third-Party Payor Class ("TPPs")), and (iii)

\$55 million to the TPP Class Settlement Pool. As shown on Exhibits A and B, the Class Settlement Funds were received on November 30 and December 3, 2004.

Since then, all payments made from the two Class Funds have been made by the process set forth in the Settlement Agreements (by recommendation or request of the Court-approved Administrator or Notice Expert, with review and approvals by the Class Counsel and notice to Defense Counsel). The monies listed here are resident with the Escrow Agent, SunTrust Bank (the most recent statement of SunTrust Bank is attached as Exhibit D). As the Court will see, interest has been earned on all Funds since they were deposited, and credited to the applicable settlement class.

The charts as Exhibit A and Exhibit B show the following totals accrued in each of the TPP and Consumer Settlement Funds and that the payments made from them have been for the following categories of costs or charges.

2. Accounting for the Consumer Fund

The initial payment of \$40 million has earned total interest of \$1,374,693.29. From this, the following payments have been made:

Payments for charges incurred for Notice to the Class – paid to Hilsoft, Inc.: \$1,994,890.69

Payments for charges of the Administrator – paid to Complete Claims Solutions, Inc.: \$241,980.72

Payments made to the State Attorneys General, pursuant to the separate Agreements with them and the Court's Order -- \$6,000,000.00

Payment of the Court-Approved Attorneys' Fees (and accompanying interest) to Class Counsel (\$10,000,000 plus interest of \$214,468.76) and to Kline & Specter (\$631,578.95 plus interest of \$21,466.42), and Incentive Awards to the Class Plaintiffs (\$62,500). A separate chart is provided as Exhibit C showing the total amount of fees and costs paid to each of the Class Counsel law firms in this action.

As a result, there remains approximately \$22.2 million in the Consumer Fund ready for distribution in the near future (see section 5 below).

3. Accounting for the TPP Fund

The initial payment of \$55 million has earned total interest of \$2,040,749.91. From this, the following payments have been made:

Payment for charges incurred for Notice to the Class (given the services and number of Class Members, a much smaller amount) – paid to Hilsoft, Inc.: \$8,544.95

Payments for charges of the Administrator – paid to Complete Claims Solutions, Inc.: \$172,507.16

Payment of the Court-Approved Attorneys' Fees (and accompanying interest) to Class Counsel (\$13,750,000 plus interest of \$310,670.05) and to Kline & Specter (\$868,421.05 plus interest of \$29,516.32), and Incentive Awards to the TPP Class Plaintiffs (\$50,000). As noted above, Exhibit C shows the total amount of fees and costs paid to each of the Class Counsel law firms in this action.

The Class Plaintiffs respectfully submit that all these payments have been appropriate and timely. They are aware that additional payments have been made this week for payment of taxes by each of the two Funds. The amounts of those payments were \$135,582 for the Consumer Settlement Fund and \$141,738 for the TPP Settlement Fund.

As a result, there remains approximately \$41.8 million in the TPP Fund ready for distribution in the near future (see section 5 below).

4. Accounting for Counsel Fees and Expenses

Attached as Exhibit C is a statement showing deposits that were made into an escrow account maintained at Lief, Cabraser, Heimann & Bernstein, LLP, class counsel which handled the accounting for the payment of counsel fees, reimbursable expenses and incentive payments (the Fee Fund).

As to deposits, the Court will notice that there are two November 2005 deposits made into the counsel fee escrow account. The Court awarded a total of \$23,750,000 for counsel fees and reimbursable expenses. The TPP Fund and the Consumer Fund were to pay those fees and expenses ratably. Since the TPP Fund had a total gross amount of \$55,000,000 and the

Consumer Fund had a total gross of \$40,000,000 (for a combined \$95,000,000) the ratable shares were approximately 58% for TPP and 42% for Consumer. Thus, \$13.75 million was withdrawn from the TPP Fund for counsel fees and expenses: \$10 million was withdrawn from the Consumer Fund.

Between the time that the original Funds were first placed into the interest-bearing accounts and the time that the monies were withdrawn for counsel fees and reimbursable expenses, interest had been earned (both for monies going to the class as well as monies going for counsel fees and expenses). Accordingly, the \$525,138.78 deposit reflects that portion of the interest that was earned toward attorney's fees and reimbursable expenses from both the TPP and the Consumer Fund.

Finally, the settlement also provided for the payment of incentive fees to certain class representatives totaling \$122,500. Thus, the total deposits made into the Fee Fund for counsel fees, reimbursable expenses and incentive payments was \$24,387,638.78.

Exhibit C also shows the disbursements made from the Fee Fund. All participating counsel provided statements of hourly charges and expenses paid by them for the matter. Lead counsel assured that all counsel were paid their hourly charges and expenses, and a modest multiplier was applied to some counsel. By and large all counsel received multipliers in very close proximity with the exception of two firms that, in the judgment of lead counsel, deserved an additional enhancement. Payments to Kline & Specter, P.C. were made pursuant to the Court's approval of the Implementation Agreement and the Fee Award Order of this Court.

Disbursements of incentive payments were made only to those persons who, by order of this Court, were entitled to receive an incentive payment. (As the Court will recall, some incentive payments were authorized by the court for class representatives from the MDL; certain

other incentive payments were authorized as a part of the implementation of the reservation with the Kline & Specter objectors).

At this time, there are remaining Funds in the Fee Fund totaling approximately \$330,000.

5. Accounting for Payment to Class Members

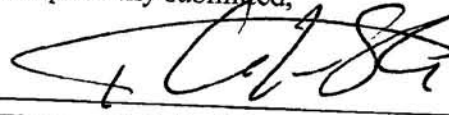
Class Counsel have been informed that the Administrator is in the process of completing its final analysis and reports on the review of proofs of claim filed by members of the Consumer Class and TPP Class. We have discussed certain questions with the Administrator, and expect final reports within two weeks. Barring any unanticipated events, Class Plaintiffs hope to file with the Court, within one month, their request for distribution to the two classes.

From a lay perspective, the process of administering and auditing claims can appear to be frustratingly slow. Accordingly, MDL class counsel has requested, and filed herewith, a declaration of the court appointed claims administrator Complete Claims Solutions. See Affidavit of Eric Lachance filed contemporaneously herewith (the "Lachance Affidavit"). The Lachance Affidavit explains the process, the current state of claims adjudication and the basis of claims finalization.

Class Counsel are, of course, available for any further questions of the Court.

Dated: June 14, 2006

Respectfully submitted,



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**Liaison Counsel for Plaintiffs in State
Coordinated Cases**

EXHIBIT C

FEE FUND

DEPOSITS

11/10/2005 DEP	In Re Lupron Settlement Fund	Settlement	13,750,000.00
11/10/2005 DEP	In Re Lupron Settlement Fund	Settlement	10,000,000.00
12/1/2005 DEP	SunTrust Corporate Trust	Interest	525,138.78
12/9/2005 DEP	SunTrust Corporate Trust	Settlement	112,500.00

TOTAL DEPOSITS

DISBURSEMENTS

24,387,638.78

		MULTIPLIER		
12/5/2005 2612	Barrett, Twomey, Broom, Hughes & Hoke, LLP	1.1	Fees	
12/5/2005 2613	Bolognese & Associates	1.1	Fees	(115,840.00)
12/5/2005 2625	Carey & Danis L.L.C.	1.1	Fees	(270,631.00)
11/10/2005 EFT	Cohen, Milstein, Hausfeld & Toll, PLLC	1.0	Fees	(444,239.00)
12/5/2005 2614	Finkelstein & Krinsk, LLP	1.1	Fees	(3,394,244.00)
11/10/2005 EFT	Foot, Meyers, Mielke & Flowers, LLC	1.1	Fees	(352,345.00)
12/5/2005 2626	Gardner, Middlebrooks, Gibbons, Kittrell & Olsen	1.6	Fees	(2,088,994.00)
12/5/2005 2627	Goldenberg, Miller, Heller & Antognoli, P.C.	1.0	Fees	(48,310.00)
11/10/2005 EFT	Hagens Berman Sobol Shapiro LLP	1.0	Fees	(44,837.00)
12/5/2005 2615	Hanzman & Criden, P.A.	1.4	Fees	(2,319,843.00)
12/5/2005 2616	Heins Mills & Olson, P.L.C.	1.1	Fees	(615,637.00)
12/13/2005 2641	Hoffman & Edelson LLC	1.1	Fees	(693,787.00)
12/5/2005 2624	Kenneth A. Wexler & Associates	1.1	Fees	(512,419.00)
11/10/2005 EFT	Kline & Specter, PC	1.1	Fees	(304,268.00)
3/30/2006 EFT	Kline & Specter, PC	N/A	Fees	(3,000,000.00)
12/5/2005 2637	Law Office Of Bryan Marcus	N/A	Fees	(83,333.33)
12/5/2005 2618	Law Offices Of Archie Lamb	1.0	Fees	(9,000.00)
12/5/2005 2629	Law Offices of Joseph Terranova	1.1	Fees	(47,285.00)
12/5/2005 2619	Law Offices Of Peter J. McNulty	1.0	Fees	(2,358.00)
12/5/2005 2630	Law Offices Of Richard Kranich	1.1	Fees	(202,073.00)
12/5/2005 2631	Lawrence Walner & Associates, Ltd.	1.0	Fees	(22,735.00)
11/10/2005 EFT	Lieff, Cabraser, Heimann & Bernstein, LLP	1.0	Fees	(32,271.00)
12/13/2005 2642	Mark K. Gray, Esq.	1.1	Fees	(4,205,510.00)
12/5/2005 2633	McNees Wallace & Nurick LLC	1.0	Fees	(79,760.00)
12/5/2005 2620	Milberg, Weiss, Bershad, Hynes & Lerach	1.0	Fees	(38,311.00)
12/5/2005 2621	Much Shelist Freed Denenberg Ament & Rubenstein	1.1	Fees	(522,618.00)
12/5/2005 2622	Provost Umphrey Law Firm	1.1	Fees	(513,047.00)
12/5/2005 2623	Rosenfeld & Rafik, P.C.	1.2	Fees	(213,372.00)
12/5/2005 2634	Shapiro Haber & Urmy LLP	3.1	Fees	(121,434.00)
12/5/2005 2632	Southeastern Legal Group	1.0	Fees	(75,457.00)
1/18/2006 EFT	Spector, Roseman & Kodroff, P.C.	1.0	Fees	(22,320.00)
12/5/2005 2635	Trujillo, Rodriguez & Richards, LLC	1.2	Fees	(3,038,804.00)
12/5/2005 2636	Zimmerman Reed PLLP	1.0	Fees	(79,923.00)
12/20/2005 2643	Hilsoft Notifications	1.0	Fees	(300,000.00)
12/20/2005 2644	Greylock McKinnon Associates		Costs	(32,945.89)
			Costs	(43,713.09)
11/16/2005 2594	Twin Cities Bakery Workers Health and Welfare Fund		Incentive Payment	(25,000.00)
11/16/2005 2588	Estate of William Brickey		Incentive Payment	(5,000.00)
11/16/2005 2589	Milton Greene		Incentive Payment	(2,500.00)
11/16/2005 2590	Steve Rowan		Incentive Payment	(2,500.00)
11/16/2005 2591	Alexandra Samsell		Incentive Payment	(2,500.00)
11/16/2005 2592	Ariel Samsell		Incentive Payment	(2,500.00)
11/16/2005 2593	Robert Swanston		Incentive Payment	(2,500.00)
11/17/2005 2603	Vista Healthplan, Inc.		Incentive Payment	(2,500.00)
11/17/2005 2595	Joseph Benoit (The Estate Of)		Incentive Payment	(25,000.00)
11/17/2005 2596	Jamie Grass-Prince		Incentive Payment	(2,500.00)
11/17/2005 2597	Debra Kibodeaux		Incentive Payment	(2,500.00)
11/17/2005 2598	George Wilson Landry		Incentive Payment	(2,500.00)
11/17/2005 2599	Henry Joseph Landry, Sr.		Incentive Payment	(2,500.00)
11/17/2005 2600	Amy LeBlanc		Incentive Payment	(2,500.00)
11/17/2005 2601	Donna Litchfield		Incentive Payment	(2,500.00)
11/17/2005 2602	Angela Sledge		Incentive Payment	(2,500.00)

FEE FUND

11/18/2005 2604	Acie Clark		
11/18/2005 2605	L. Maxine Goetting, Administrator Estate of Carl Goetting	Incentive Payment	(5,000.00)
11/18/2005 2606	William Porter	Incentive Payment	(5,000.00)
11/22/2005 2610	J. Kelly Farris	Incentive Payment	(5,000.00)
11/22/2005 2609	Brenda Campbell-Hubbard	Incentive Payment	(2,500.00)
11/22/2005 2607	David Lee Jarman	Incentive Payment	(2,500.00)
11/22/2005 2608	Carol Sullivan	Incentive Payment	(2,500.00)
		Incentive Payment	(2,500.00)
4/21/2006 EFT	TAP Pharmaceutical Products		
		Risk Share Payment	(52,500.00)
TOTAL DISBURSEMENTS			
NET TOTAL			<u>(24,056,664.31)</u>
			330,974.47